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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

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9 United States of America,  
10 Plaintiff,  
11 v.  
12 Aaron Thomas Mitchell,  
13 Defendant.

**CR 22-01545-TUC-RM(EJM)**  
**REPORT AND**  
**RECOMMENDATION**

14 Pending before the Court is a Motion for Bill of Particulars Regarding Count 3 of  
15 Superseding Indictment (Doc. 105) filed by the defendant Aaron Thomas Mitchell. For  
16 the reasons that follow, the Court recommends that the District Court deny the motion.

17 **FACTUAL BACKGROUND**

18 The defendant is charged in a Superseding Indictment (Doc. 38) the following  
19 offenses: (1) Deprivation of Rights Under Color of Law, in violation of 18 U.S.C. § 242  
20 (Count One); (2) Kidnapping of a Minor, in violation of 18 U.S.C. §§ 1201(a)(1) and (g)  
21 (Count Two); and False Statements, in violation of 18 U.S.C. §1512(b)(3) (Count Three).  
22 Counts One and Two pertain to the defendant's alleged kidnapping and sexual assault of a  
23 minor.

24 Count Three alleges that: "On or about April 26, 2022, in the District of Arizona,  
25 the defendant AARON THOMAS MITCHELL, knowingly engaged in misleading conduct  
26 toward another person and persons, specifically, officers from the Douglas Police  
27 Department (DPD) with the intent to hinder, delay, and prevent the communication to a  
28 law enforcement officer and judge of the United States of information relating to the

1 commission and possible commission of a federal offense as charged in Counts One and  
2 Two, in a statement he provided in connection with the DPD investigation of the sexual  
3 assault of M.V. that occurred on or about April 25, 2022. All in violation of Title 18,  
4 United States Code, Sections 1512(b)(3).” Superseding Indictment (Doc. 38).

5 With respect to Count Three, the defendant requests that the government provide a  
6 Bill of Particulars detailing: (1) the specific manner in which his statement to the DPD  
7 officer constituted the engagement in misleading conduct towards another person; and (2)  
8 the specific manner in which his statement intended to hinder, delay, or prevent the  
9 communication of information to a law enforcement officer and judge of the United States.  
10 Def’s Mot. For Bill of Particulars (Doc. 105) at 2. The defendant contends that Count  
11 Three is vague because it does not set forth what statement or statements were made “with  
12 the intent to hinder, delay, or prevent the communication of information to a law  
13 enforcement officer and judge of the United States” relating to the commission of Counts  
14 One and Two. *Id.* at 3. The defendant points out that the transcript of his interview with  
15 DPD officers is over one hundred pages. As a result, the defendant argues that the  
16 government must set forth the specific statements the government will use to prove Count  
17 Three so he can understand the government’s theory of the case and adequately prepare a  
18 defense. *Id.*

19 The government argues that Count Three unambiguously alleges a detailed violation  
20 of 18 U.S.C. §1512(b)(3). Govt’s Response (Doc. 123) at 3. Specifically, Count Three  
21 includes facts and circumstances about the offense because it references the conduct  
22 alleged in Counts One and Two – seizing and kidnapping the minor without her consent  
23 and using his penis to penetrate the vulva and anus of the minor – which is directly linked  
24 to the alleged false statements made to DPD officers. *Id.* at 3. The government also points  
25 out that it has provided the defendant with “fulsome discovery” – *i.e.*, thousands of pages  
26 of discovery, including police reports and interview summaries, as well as audio files,  
27 videos and photographs -- which lays out the conduct that forms the basis of the charged  
28 offenses and the government’s theory of the case. *Id.* at 4.

1           The government goes on to detail the defendant's alleged false statements  
 2 contained within the discovery provided: (1) the defendant denied having sexual contact  
 3 with the minor; (2) the defendant denied handcuffing the minor; (3) the defendant claimed  
 4 that the minor wanted to ditch school and spend time with him; (4) the defendant did not  
 5 do anything to the minor's backpack; and (5) the defendant never socially or  
 6 interpersonally interacted with the minor. The government argues that a Bill of Particular  
 7 is not appropriate or necessary because the allegations set forth in Count Three and the  
 8 discovery adequately inform the defendant of the charges and evidence against him.

9           In his Reply, the defendant notes that the government has delineated five subject  
 10 areas about which it contends he made false statements. Def's Reply (Doc. 131) at 2.  
 11 Because the government has conceded that these five subject areas are the basis for  
 12 engaging in misleading conduct, the defendant argues that a Bill of Particulars should be  
 13 provided and that Count Three "should be amended to explicitly incorporate these five  
 14 subject matters[.]" *Id.* The defendant also argues that specific allegations of misleading  
 15 conduct set forth by the government "fails to properly state a charge under 18 U.S.C.  
 16 §1512(b)(3)" because that statute addresses tampering with a witness, victim, or informant.  
 17 *Id.* at 3.

### 18           DISCUSSION

19           A Bill of Particulars serves several purposes: it enables adequate trial preparation,  
 20 it reduces surprises, and it prevents double jeopardy from occurring. *United States v. Long*,  
 21 706 F.2d 1044, 1054 (9th Cir. 1983). However, in order to adequately prepare for trial, a  
 22 defendant only needs to know the "theory of the government's case," and not "all the  
 23 evidence the government intends to produce." *Cook v. United States*, 354 F.2d 529, 531  
 24 (9th Cir. 1965). "Full discovery will obviate the need for a bill of particulars." *United States*  
 25 *v. Long*, 706 at 1054 (citations omitted).

26           An indictment may track the language of a statute, provided that the statute itself  
 27 clearly "set[s] forth all the elements necessary to constitute the [offense] intended to be  
 28 punished." *Hamling v. United States*, 418 U.S. 87, 117 (1974). The defendant does not

1 claim that Count Three fails to set forth the elements of the offense charged. As a result,  
2 it is presumptively sufficient, and there is no legal basis for the Court to require the  
3 government to amend Count Three in the manner suggested by the defendant. (*See Id.*) In  
4 fact, Count Three goes beyond merely tracking the language of 18 U.S.C. §1512(b)(3) by  
5 alleging the precise conduct that forms the basis of the charge, *i.e.*, the “statement [the  
6 defendant] provided in connection with the DPD investigation of the sexual assault of M.V.  
7 that occurred on or about April 25, 2022.” Count Three further alleges that the false  
8 statements relate to the commission of the offenses alleged in Counts One and Two, which  
9 are also detailed with specificity in the superseding indictment. (Doc. 38). The Court finds  
10 that a Bill of Particulars is not warranted given the detailed factual allegations in the  
11 superseding indictment.

12 However, even if that was not the case, the extensive amount of discovery provided  
13 in this case obviates the need for a Bill of Particulars. The defendant does not allege that  
14 relevant discovery has not been provided. As a result, the defendant has all the evidence  
15 that will be used to prove Counts One and Two, as well as his statement which is the basis,  
16 in large part, for Count Three. The defendant has been fully apprised of the charges against  
17 him and the theory behind the charges. Thus, there is no need for a Bill of Particulars.

18 Finally, in its Response to the motion to dismiss, the government has gone even  
19 further by detailing false statements which are relevant to Count Three. As the government  
20 notes, “there is no mystery about the evidence the [g]overnment plans to present” at trial.  
21 (Doc. 123) at 3. There is also no mystery about the government’s theory of the case for  
22 Count Three: the defendant repeatedly made false statements to DPD officers by denying  
23 that he kidnapped and sexually assaulted the minor, as well as details about how those  
24 offenses were committed.<sup>1</sup> If there are other false statements relating to the commission  
25 of the kidnapping and sexual assault offenses that the government has not detailed (which  
26 appears unlikely), the defense has the discovery necessary to assess if any other statement

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28 <sup>1</sup> Even if the defendant is correct that false statements to law enforcement cannot support a charge under 18 U.S.C. §1512(b)(3), that legal deficiency has no relevance to the instant motion.

1 appears to be at odds with the evidence supporting Counts One and Two. Therefore, a Bill  
2 of Particulars is not required for these reasons as well.

3 **CONCLUSION AND RECOMMENDATION**

4 The allegations in the superseding indictment and the discovery provided to the  
5 defendant is more than sufficient to enable the defense to understand the government's  
6 theory of the case, adequately prepare for trial, avoid surprises, and prevent a double  
7 jeopardy violation. As a result, the Court recommends that the District Court deny the  
8 Motion for a Bill of Particulars. (Doc. 105).

9 Pursuant to 28 U.S.C. §636(b) and Rule 59(b)(2) of the Federal Rules of Criminal  
10 Procedure, any party may serve and file written objections within fourteen (14) days after  
11 being served with a copy of this Report and Recommendation. No reply shall be filed  
12 unless leave is granted from the District Court. If objections are filed, the parties should  
13 use the following case number: **CR 22-01545-TUC-RM.**

14 Failure to file timely objections to any factual or legal determination of the  
15 Magistrate Judge in accordance with Fed. R. Crim. P. 59 may result in waiver of the right  
16 of review.

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18 Dated this 30th day of January, 2024.

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21 Eric J. Markovich  
22 United States Magistrate Judge  
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